



Open Content Licensing and Improved transparency in the proposed directive on the collective rights management.

After the publication of the Commission's proposal for a directive on collective rights management the COMMUNIA association had identified¹ two main shortcomings of the proposed directive:

- A lack of clear rules regarding the use of open content licenses by members of collecting societies and,
- Insufficient provisions aimed at ensuring the transparent availability of repertoire information to the general public.

We are pleased that both of these issues have been taken up by the European Parliament in its report and we think that it is important that the following amendments proposed by the Parliament will be incorporated into the final text of the directive.

Individual licensing for non commercial-uses

With regards to the use of Open Content licences the Parliament has proposed the following amendment (**AM 54 JURI report**) that would introduce a new section 2a under Article 5. This amendment should be included in the final text:

Rightholders shall have the right to grant licences for the non-commercial uses of the rights, categories of rights or types of works and other subject matter of their choice. Collective management organisations shall inform their members of this right and of the conditions attaching thereto.

This amendment would allow rights holders who are members of collecting societies that exclusively manage their rights on their behalf to issue licenses that allow the free non-commercial re-use of their works. Such licenses include some of the Creative Commons licenses, which are widely used for online distribution of creative works. In the past years, a number of European collecting societies such as SACEM, BUMA, KODA and STIM have entered into pilot projects that allow the use of such licenses by their members. These pilots have shown that individual licensing for non-commercial uses does not interfere with the collective management of the same works.

The proposed amendment would have the effect of expanding this possibility to all members of all collecting societies across the European Union and significantly increasing the flexibility offered to them. We therefore consider this amendment an important contribution to the overall

¹ <http://www.communia-association.org/2013/01/07/communica-policy-paper-on-proposed-directive-on-collective-management-of-copyright/>



objectives of the directive. Furthermore, neither the original Commission proposal nor the COREPER text contain provisions that would conflict with this amendment.

Public availability of repertoire information

With regards to the issue of repertoire transparency, the Parliament has proposed a restructuring of Articles 18 and 19 of the Directive proposal. The report deletes article 18 that deals with making certain information available to specific target audiences. It proposes a much more straightforward approach wherein this information has to be made public (Article 19) and thus becomes available to all interested parties including entities that do not (yet) engage in transactions with collective rights management organisations. We strongly support this approach, as public repertoire information is a cornerstone for a transparent and well functioning copyright system in the digital environment. Specifically this means that the following amendments proposed by parliament should be included in the final text:

- In article 19 (ga) to (gd), **AMs 128, 129 and 130 from the JURI report** should be supported. These ensure repertoire information is fully open and transparent, including on works for which some rightholders are missing (potential orphan works).

In addition the following two amendments are of relevance to the question of repertoire transparency:

- In article 23, **AM 135 from the JURI report** should be supported (deletion of article 23(2)). This will ensure that collective management organisations do not have discretion to decide that repertoire information is commercially sensitive in order to limit its public availability.
- In Article 3 – point j, **AM 50 from the JURI report** should not be supported and the Council definition should prevail. The Parliament definition could be interpreted to mean that societies only have to indicate which types of works they manage under article 19. This would take away any substance to repertoire transparency obligations.

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